UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

Philip Chirogene, Plaintiff, v. Fowler, Landen, & Rose, Defendant.	Civil Action No.: 4:17-cv-663 **COMPLAINT** JURY

For this Complaint, Plaintiff, Philip Chirogene, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the "FDCPA").

2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

4. Plaintiff, Philip Chirogene ("Plaintiff"), is an adult individual residing in Wylie, Texas, and is a "consumer" as the term is defined by 15 U.S.C. § 1692a(3).

5. Defendant Fowler, Landen, & Rose ("FLR"), is a Texas business entity with an address of 12200 Ford Road, Suite 355, Farmers Branch, Texas 75234, operating as a collection agency, and is a "debt collector" as the term is defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

6. Plaintiff allegedly incurred a financial obligation (the "Debt") to an original creditor (the "Creditor").

7. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes, which meets the definition of a "debt" under 15 U.S.C. § 1692a(5).

8. The Debt was purchased, assigned or transferred to FLR for collection, or FLR was employed by the Creditor to collect the Debt.

9. Defendant attempted to collect the Debt and, as such, engaged in "communications" as defined in 15 U.S.C. § 1692a(2).

B. FLR Engages in Harassment and Abusive Tactics

10. On May 26, 2017, FLR called Plaintiff at 7:30 a.m. in an attempt to collect the Debt.

11. In addition, FLR left several voicemail messages for Plaintiff. The voicemail messages failed to disclose that the communications were from a debt collector in an attempt to collect the Debt.

12. FLR also threatened to file legal action against Plaintiff if the Debt was not paid.

13. Upon information and belief, to date no such legal action has been filed.

14. In another voicemail message, FLR called Plaintiff an "idiot" and a "jackass," and demanded a call back from Plaintiff by 10:00 a.m. that day "so that we can discuss this further like men."

15. FLR also threatened to go to Plaintiff's house and threatened Plaintiff with criminal charges if the Debt was not paid.

16. FLR called Plaintiff at an excessive and harassing rate, placing up to eight calls per day, oftentimes in a rapid succession.

C. Plaintiff Suffered Actual Damages

17. Plaintiff has suffered and continues to suffer actual damages as a result of Defendant's unlawful conduct.

18. As a direct consequence of Defendant's acts, practices and conduct, Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

COUNT I
VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692, et seq.

19. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

20. Defendant's conduct violated 15 U.S.C. § 1692c(a)(1) in that Defendant contacted Plaintiff before 8:00 a.m.

21. Defendant's conduct violated 15 U.S.C. § 1692d in that Defendant engaged in behavior the natural consequence of which was to harass, oppress, or abuse Plaintiff in connection with collection of the Debt.

22. Defendant's conduct violated 15 U.S.C. § 1692d(2) in that Defendant used profane and abusive language when speaking with Plaintiff.

23. Defendant's conduct violated 15 U.S.C. § 1692d(5) in that Defendant caused a phone to ring repeatedly and engaged Plaintiff in telephone conversations, with the intent to annoy and harass.

24. Defendant's conduct violated 15 U.S.C. § 1692e in that Defendant used false, deceptive and/or misleading representations or means in connection with collection of the Debt.

25. Defendant's conduct violated 15 U.S.C. § 1692e(2) in that Defendant misrepresented the character and legal status of the Debt.

26. Defendant's conduct violated 15 U.S.C. § 1692e(5) in that Defendant threatened to take legal action against Plaintiff without actually intending to do so.

27. Defendant's conduct violated 15 U.S.C. § 1692e(7) in that Defendant falsely misrepresented that Plaintiff had committed a crime.

28. Defendant's conduct violated 15 U.S.C. § 1692e(10) in that Defendant employed false and deceptive means to collect the Debt.

29. Defendant's conduct violated 15 U.S.C. § 1692e(11) in that Defendant failed to inform Plaintiff that the communication was an attempt to collect the Debt.

30. Defendant's conduct violated 15 U.S.C. § 1692f in that Defendant used unfair and unconscionable means to collect the Debt.

31. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the FDCPA.

32. Plaintiff is entitled to damages as a result of Defendant's violations.

COUNT II
VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT
TEX. FIN. CODE ANN. § 392, et al.

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. Plaintiff is a "consumer" as defined by Tex. Fin. Code Ann. § 392.001(1).

35. Defendant are each a "debt collector" and a "third party debt collector" as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).

36. Defendant falsely accused Plaintiff of a crime, in violation of Tex. Fin. Code Ann. § 392.301(a)(2).

37. Defendant threatened to file a criminal complaint against Plaintiff, despite having knowledge that Plaintiff did not violate a criminal law, in violation of Tex. Fin. Code Ann. § 392.301(a)(6).

38. Defendant used abusive and profane language when speaking with Plaintiff, in violation of Tex. Fin. Code Ann. § 392.302(1).

39. Defendant caused a telephone to ring repeatedly, with the intent to annoy or abuse Plaintiff, in violation of Tex. Fin. Code Ann. § 392.302(4).

40. Plaintiff is entitled to injunctive relief and actual damages pursuant to Tex. Fin. Code Ann. § 392.403(a)(1) and (2) and to remedies under Tex. Bus. & Comm. Code § 17.62 pursuant to Tex. Fin. Code Ann. § 392.404(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

1. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
2. Statutory damages of $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
4. Injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
5. Actual damages pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
6. Remedies under Tex. Bus. & Comm. Code § 17.62 pursuant to Tex. Fin. Code Ann. § 392.404(a);
7. Punitive damages; and
8. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: September 19, 2017

Respectfully submitted,

By */s/ Jenny DeFrancisco*

Jenny DeFrancisco, Esq.
CT Bar No.: 432383
LEMBERG LAW LLC
43 Danbury Road, 3rd Floor
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
E-mail: jdefrancisco@lemberglaw.com
Attorneys for Plaintiff